

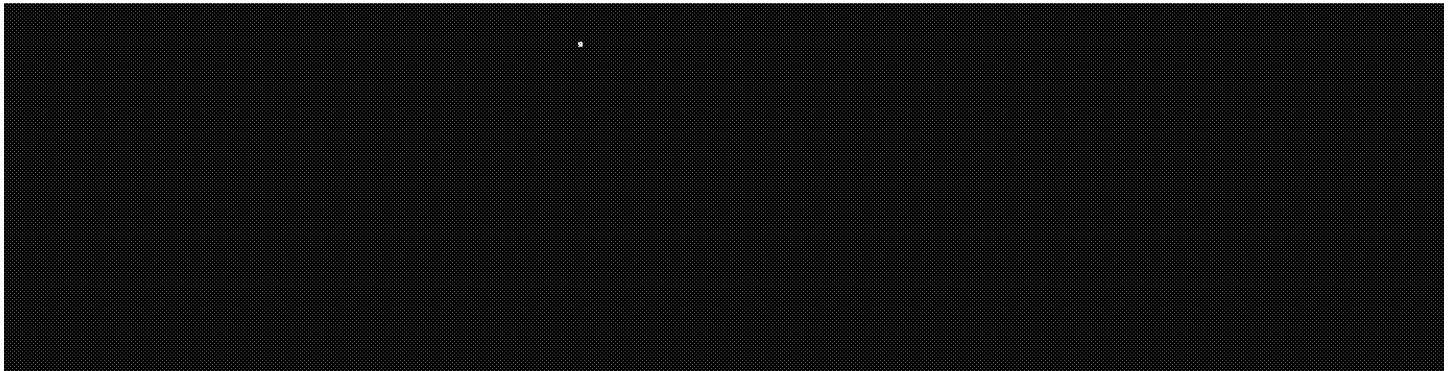
Message

From: Frithsen, Jeff [Frithsen.Jeff@epa.gov]
Sent: 2/1/2021 8:04:48 PM
To: Orme-Zavaleta, Jennifer [Orme-Zavaleta.Jennifer@epa.gov]
Subject: FW: BREAKING: Court Scraps Trump's 'Secret Science' Rule After EPA Request

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From: Bloomberg Law <bloomberg@bna.com>
Sent: Monday, February 1, 2021 1:27 PM
To: Frithsen, Jeff <Frithsen.Jeff@epa.gov>
Subject: BREAKING: Court Scraps Trump's 'Secret Science' Rule After EPA Request



Environment & Energy Report

Monday, February 1, 2021

Court Scraps Trump's 'Secret Science' Rule After EPA Request (1)

A federal court has scrapped the Trump administration's "science transparency" regulation, granting a request from the EPA in light of a recent decision casting doubt on the rule's legality.

Lawyers for the Environmental Protection Agency on Sunday filed an unopposed [request](#) for the U.S. District Court for the District of Montana to vacate the rule and remand it to the agency. Chief Judge Brian Morris granted the request in a short [order](#) Monday.

The decision saves the Biden administration the significant time and resources it would have had to spend to unwind the Trump administration rule through a standard rulemaking process.

The Strengthening Transparency in Regulatory Science rule, also known as the "secret science" rule, restricts the EPA from crafting regulations based on scientific research that isn't public or can't be reproduced. Environmental advocates, scientists, and a coalition of left-leaning states and cities oppose the regulation.

The EPA's request to vacate the rule pointed to the court's [Jan. 27 ruling](#) that the agency, under President Donald Trump, violated federal law in making the contentious rule effective immediately upon its publication in the Federal Register, instead of after a customary 30-day waiting period.

'Substantive' Rule

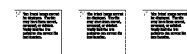
The rule was substantive, not procedural, and therefore couldn't bypass the 30-day period, Morris wrote last week. He added that the conclusion "casts into significant doubt whether EPA retains any legal basis to promulgate the Final Rule."

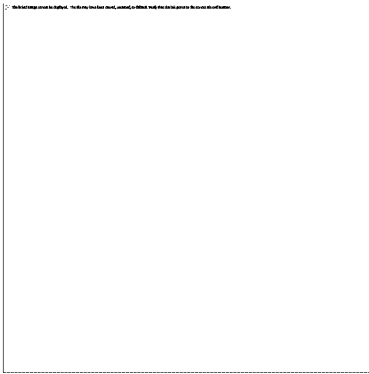
The EPA had argued that the court should go a step further and toss the Trump rule entirely.

"Based on the Court's conclusion that the Final Rule is a substantive rule, the sole source of authority for the rule's promulgation cannot support the rulemaking," the agency told the court Sunday. "In these circumstances, Defendants acknowledge that vacatur of the Final Rule is appropriate and therefore respectfully request that the Court vacate the Final Rule and remand the matter to EPA."

The case is [Env'tl Defense Fund v. EPA](#), D. Mont., No. 4:21-cv-00003, 2/1/21.

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